HIGH COURT OF UTTARANCHAL AT NAINITAL
(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

W.P. No. 234/06 (S/S)

Naresh Kumar
Vs
Managing Director U.S. Nagar and others

Approved for reporting.

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Not approved for reporting

Date of decision 02.03.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 234 (S/S) of 2006

Naresh Kumar S/o Shri Jhandu Singh employed as clerk in Dineshpur Kisan Sewa Sahkari Samiti Ltd, Dineshpur, district-Udham Singh Nagar .....Petitioner

Versus

1. Managing Director, Dineshpur Kisan Sewa Sahkari Samiti Ltd, Dineshpur district Udham Singh Nagar.
2. Chairman, Dineshpur, Kisan Sewa Sahkari Samiti Ltd Dineshpur, district Udham Singh Nagar.
3. Brij Mohan Saini, Managing Director, Dineshpur Kisan Sewa Sahkari Samiti Ltd, Dineshpur, district Udham Singh Nagar.

.....Respondents

Sri C.D. Bahuguna, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 02-03-2006

Hon'ble Rajesh Tandon, J.

Heard Sri C.D. Bahuguna, Counsel for the petitioner and Standing counsel for the respondents.

The present petition has been preferred for issue of a writ in the nature of Certiorari, quashing the impugned order dated 20-01-2006, contained in Annexure-1 to the petition, by which an inquiry has been initiated by the respondents against the petitioner on certain charges and the petitioner has been placed under suspension by the same order.

Briefly stated, the petitioner was initially appointed as clerk on 05-12.1987 in the Dineshpur Kisan Sewa Sahkari Samiti, Dineshpur, district-Nainital (Now Udham Singh Nagar). He joined the post on 7-12-1987 and by the order dated 28-02-2005, the petitioner was directed to hold the Charge of Evening Branch of Mini Bank, run by the Dineshpur Kisan Sewa Sahkari Samiti, Dineshpur, U.S. Nagar.

In para. 3 of the writ petition, it has been stated that the Dineshpur Kisan Sewa Sahkari Samiti, Dineshpur is one of the Cooperative Credit Societies run under the control of Cooperative department of the State. Registrar, Cooperative Societies issues administrative instructions to the Cooperative Credit Societies for their function. Under the Staffing pattern of 1983, the District Assistant Registrar keeps administrative control over all Cooperative Credit Societies. The Assistant Registrar of the each district also possesses the power to transfer an employee of a cooperative Credit Society to another Cooperative Credit Society. Any appointment in a Kisan Sewa Sahkari Samiti, can not be made without the permission of the Assistant Registrar of the district under the Staffing Pattern. Every Kisan Sewa Sahkari Samiti, which is a Cooperative Credit Society, is financed by the State Govt. and it remains under effective control of the State Govt. The learned counsel for the petitioner has submitted that the petitioner has been placed under suspension on false allegations.

In para. 5 to 8 of the writ petition it has been stated that that in the month of May 1994 the petitioner and Sri Brij Mohan Saini, the respondent no. 3 were posted as employees of the Sahkari Samiti and that the petitioner realising that some bungling has taken place in the Sahkari Samiti by the

respondent no.3, and few others, submitted a complaint as on 04-05-1994 before the District Magistrate, Nainital against the respondent no. 3 and three others and pursuant to initiation of inquiry initiated by the Chairman and the then Managing Director of the Dineshpur Kisan Sewa Sahkari Samiti, Dineshpur, the respondent no-3, Sri Brij Mohan Saini and three others were suspended;

In para. 9 and 10 to the writ petition it has been stated that that the respondent no.3, became Managing Director of the Dineshpur Kisan Sewa Sahkari Samiti, Dineshpur, in the month of April 2005 and immediately thereafter he started harassing the petitioner for one pretext or the other.

In para.11 and 13 of the writ petition it has been stated that the respondent no. 2 and 3 having been colluded sent a letter to the petitioner on 06-10-2005 and thereby called upon him to submit his explanation within 3 days as against a number of false allegations and that the petitioner was shocked to see the allegations contained in the letter dated 06-10-2005; and since absolutely false allegations were levelled against the petitioner in the letter dated 06-10-2005, he felt harassed and humiliated, and therefore, he filed a criminal complaint under section 500 IPC in the court of Civil Judge / Judicial Magistrate, Rudrapur, U.S.Nagar, against the respondent nos. 2 and 3, on 03-01-2006 and prayed therein for punishing the respondents for the offence of defamation.

In para. 22 and 24 of the writ petition it has been stated that the respondents want to rope the petitioner in any false case with a view to wreak vengeance against the petitioner and that the grievance of the respondents against the petitioner was aggravated the moment they came to know that a case of for defamation has been

filed by the petitioner against the respondents in the court of Judicial Magistrate, Rudrapur, Udham Singh Nagar; and then they decided to suspend the petitioner by all means and in any circumstances, and for that purpose, they took the help of one lady Smt. Sita Devi to rope the petitioner in the disciplinary proceedings and then to suspend him on the basis of sheer false allegations.

The respondents has filed caveat in the present writ petition and Sri Rajendra Dobhal, has appeared as counsel for the respondents.

The counsel for the petitioner has submitted that by means of the impugned order, allegations have been levelled against the petitioner out of sheer ill will and malice and the petitioner has been made victim under the hands of the respondents. Learned counsel further submitted that any employee should not be suspended in a routine and casual manner for some minor allegations and an action of suspending an employee may be resorted to only in exceptional circumstances when the allegations against the employee are so grave and serious that in the case of their being proved, the employee can be dismissed or removed from service.

The learned counsel for the petitioner submitted that in the case-**S. K. Goel Vs State of Uttaranchal, reported in 2005 (2) Uttaranchal Decision-11,** the Division Bench of this Court held that it is not necessary that in every case an employee should be suspended pursuant to the disciplinary proceeding and if continuance of an employee in the same place or post at the same station may influence the inquiry, then instead of suspending an employee, he may be transferred to another place. The relevant portion of Para. 4 of the judgment is reproduced to below:-

"4. It is not necessary to place a Government employee under suspension in very case where disciplinary proceeding are contemplated. The continuance of the employee in the same post or at the same station may be considered likely to influence or prejudice the enquiry and the disciplinary proceedings. Sometimes, in view of the nature of the post held by the officer and the nature of the irregularities alleged, the very continuance of the officer in service during the disciplinary proceedings may be considered undesirable. In the first case, the proper conduct of enquiry and disciplinary proceedings can be ensured by a mere transfer of the officer. Only in the second case the officer need be placed under suspension. Hence, it is incumbent upon the disciplinary authority to consider whether a transfer of the officer will he sufficient or whether suspension itself is required"

This court was further observed in the same Para of the judgment that though the suspension is not a punishment but it visits the employee with serious civil consequences and loss of reputation and prestige. The relevant portion is as under:

"It should be remembered that though suspension is not a punishment, it visits the employee with serious Civil consequ- ences and loss of reputation and prestige. Hence an order of suspension should not be passed lightly, casually or without proper application of mind".

Having heard learned counsel for both the parties, I am of the opinion that the allegations against the petitioner are not

so grave, which may justify suspension of the petitioner during pendency of the inquiry.

In view of above, a writ in the nature of mandamus is issued to the respondents to conclude the inquiry within a period of 3 months as far as possible. Till the inquiry is concluded, the order of suspension shall remain in abeyance. The petitioner shall get full salary for the period he remained under suspension.

Consequently, writ petition is disposed of. No order as to costs.

Dated: 2.3.2006 **Rajesh Tandon J.**

*Dhyani